



U.S. Department of Justice  
Immigration and Naturalization Service

HQASM 120/10.4.1

ULLICO Bldg., 2<sup>nd</sup> floor  
425 I Street NW  
Washington, DC 20536

NOV 1 2001

MEMORANDUM FOR: ASYLUM OFFICE DIRECTORS  
ASYLUM OFFICE DEPUTY DIRECTORS  
SUPERVISORY ASYLUM OFFICERS.  
QA/TRAINERS  
ASYLUM OFFICERS

FROM: Joseph E. Langlois, Director  
Asylum Division  
Office of International Affairs

SUBJECT: Clarification of Procedures for Processing Applicants Covered by  
Deferred Enforced Departure (DED) who are Ineligible for  
Asylum.

This memorandum clarifies procedures for the adjudication of affirmative asylum cases for persons who are covered by Deferred Enforced Departure (DED)<sup>1</sup> but who are not eligible for asylum and who are not in valid status. See INA §§ 212(a) and 237(a) and 8 C.F.R. § 208.14(c)(1) and (2).

The procedures in this memorandum do not change current procedures covering the GTMO/DED Haitians discussed in the *Procedures Manual - Affirmative Asylum Process*. Section III(B)(8), "GTMO/DED Haitians"

The decision to extend DED protection to individuals is made by the President<sup>2</sup> and the decision is issued as an Executive Order or a Presidential Memorandum. Since the President orders DED, which is a temporary, discretionary, administrative stay of deportation granted to aliens from designated countries, it is not a statutory provision under the Immigration and Nationality Act and as such it is not considered an immigration status. Historically, DED has been issued five

<sup>1</sup> DED, in use since 1990, was formerly known as Extended Voluntary Departure (EVD). EVD, in use from 1960 until 1990, was used by the Attorney General pursuant to INA § 103.

<sup>2</sup> Unlike TPS, DED has no statutory basis, but rather emanates from the President's constitutional powers to conduct foreign relations. See INS Website.

Subject: Clarification of Procedures for Processing Applicants Covered by Deferred Enforced Departure (DED) who are Ineligible for Asylum

times since 1990.<sup>3</sup> Most recently, DED was extended to Liberians starting on September 29, 1999, due to compelling foreign policy reasons, after it was decided that further extension of Temporary Protected Status for Liberians was no longer warranted after September 28, 1999. President Clinton extended DED for Liberians in 2004 and President Bush has just re-extended it until September 29, 2002.<sup>5</sup>

DED is not considered to be a status under 8 CFR § 208.14(c)(2) (applicant who is maintaining valid immigrant, nonimmigrant, or Temporary Protected Status). Therefore, individuals who are covered by DED and are not eligible for asylum must be referred pursuant to 8 CFR § 208.14(c)(1) unless they otherwise have valid status or parole at the time of decision, described in 8 CFR § 208.14(c)(2) (valid immigrant, nonimmigrant status, Temporary Protected Status) or 8 CFR § 208.14(c)(3) (valid parole). Therefore, asylum officers should refer DED-protected applicants, as opposed to denying these cases, when they are not eligible for a grant of asylum and they possess no other form of immigration status.

#### [Attachment](#)

---

<sup>3</sup> DED was issued to: Approx. 80,000 Chinese nationals present in the U.S. since June 1989 (DED 1990 -1993); Approx. 150,000 Salvadorans who had TPS (DED June 1992-December 31, 1994); Approx. 2,000 Persian Gulf Evacuees (DED ended January 1, 1997); Approx. 40,000 Haitian parolees or applicants for asylum prior to December 31, 1995 (DED December 23, 1997 - 1998); and approx. 10,000 Liberians who had TPS (DED September 29, 1999-present).

<sup>4</sup> INS. "Deferred Enforced Departure Extended for Liberians" News Release (Washington, DC: 28 September 2000).

<sup>5</sup> Bush, George. White House. *Measures Regarding Certain Liberians in the United States.*, Presidential Memorandum for the Attorney General (Washington, DC: 25 September 2001) (<http://www.whitehouse.gov/news/releases/2001/09/20010925-7.html>), 1 p.